IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION Nos. 19485 of 2004 and 19487 of 2004

W.P.NO. 19485 OF 2004

Between:

Mohd. Zameer Nawaz, S/o.Mohd. Shah Nawaz,
Agriculturist, R/o.Roshan Manzil, 23/1343,
Tekkemitta Nellore.

..... PETITIONER

AND

1 The Joint Collector, Nellore.
2 The Revenue Divisional officer, Gudur Nellore Dist.
3 The Mandal Revenue officer, Chilakur (M), Nellore Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction, order or orders more particularly one in the nature of writ of certiorari calling for the records pertaining to the show-cause notice Rc.No.B.25/2004 dt.19-7-2004 issued by the third respondent and his consequential action in trying to evict the petitioner from the petition schedule land without passing any orders on the explanation submitted by the petitioner on 30-8-2004 and quash the same as illegal, arbitrary, malafide, violative of principles of natural justice and violative of Art.300(A), 19(1)(g) and 21 of the Constitution of India and consequentially direct the respondents not to interfere with the peaceful possession and enjoyment of the schedule land in the interest of justice and pass.

Counsel for the Petitioner:MR.A.CHANDRAIH NAIDU

Counsel for the Respondent No.: GP FOR ASSIGNMENT

The Court made the following :

WRIT PETITION NO : 19487 of 2004

Between:

Mohd.Shaistha Begum, W/o Mohd.Shah Nawaz,
R/o Roshan Manzil, 23/1343, Tekkemitta, Nellore

..... PETITIONER

AND

1 The Joint Collector, Nellore
2 The Revenue Divisional Officer, Gudur, Nellore District
3 The Mandal Revenue Officer, Chilakur Mandal, Nellore District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, direction, order or orders more particularly one in the nature of Writ of Certiorari calling for the records pertaining to the show-cause notice Rc.No.B.25/2004 dated 19-07-2004 issued by the third respondent and his consequential action in trying to evict the petitioner from the petition schedule land without passing any orders on the explanation submitted by me on 30-08-2004 and quash the same as illegal, arbitrary, malafide, violative of principles of natural justice and violative of Art.300(A), 19(1)(g) and 21 of the Constitution of India and consequentially direct the respondents not to interfere with the peaceful possession and enjoyment of the schedule land in the interest of justice and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case

Counsel for the Petitioner:MR.A.CHANDRAIH NAIDU

Counsel for the Respondent No.: GP FOR ASSIGNMENT

The Court made the following :

COMMON ORDER:

Since the common questions of fact and law arise in both the writ petitions, they are being disposed of by a common order.

2. Petitioners, who were issued notices, in Form No.1 mentioned in the Rules framed under the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, (the "Act"), had, after submitting their explanations to the said notices, filed these writ petitions seeking a direction to the respondents to withdraw the said show cause notices and to direct the respondents not to evict them from the lands in their occupation.

The case, in brief, of the petitioners, is that the lands in respect of which notices under the Act were issued to them, are their own private lands but not Government lands, and so respondents have no right to invoke the provisions of the Act or the Rules framed thereunder and that the notices impugned were issued to them in a desperate effort to somehow fulfill the promise made to people that about one lakh acres of land would be distributed to the poor. The case of respondents is that the lands in respect of which notices impugned are issued stand registered as

Government Poramboke lands in the revenue registers and since the original assignee transferred those lands, 3rd respondent after following the procedure prescribed for canceling the patta granted to the original assignee, issued orders directing eviction of petitioners from the government land in their occupation and so the remedy if any, of the petitioners was to file an appeal but not writ petitions in this court.

3. The main contention of the learned counsel for the petitioners is that since the lands in respect of which notices impugned are issued, were purchased by the petitioners under registered sale deeds from their vendors who earlier had purchased from the earlier owners, and for the reason the certificate issued by the Sub-registrar shows that the lands purchased by the petitioners are patta lands and are not assigned lands, and since petitioners also were issued ryotwari passbooks and title deeds by the concerned revenue authorities under the provisions of the A.P. Rights in Land and Pattadar Pass Books Act, 1971, it is clear that the lands purchased by the petitioners are private patta lands of their vendors and their predecessors in title, but are not government lands and so the proceedings initiated by the respondents to evict the petitioners by invoking the provisions of the Act and Rules made thereunder is in violation of the canons of justice. He placed strong reliance on **Rambagh Satyanarayana and others Vs. Joint Collector, R.R.District and others (),** a case arising under Hyderabad Land Revenue Act, **Shyam Sunder Vs. Govt. of A.P., Revenue (Assignment) Department and others (), G.V.K.Rama Rao and another Vs. Bakelite Hylam Employees Co-op. House Building Society, Hyderabad (),** which are cases arising under Laoni Rules, 1347 Fasli, 1950 respectively in support of his contention that when there is no evidence to show that the lands were assigned with restraint on alienation, proceedings under the Act cannot be initiated, and urged that even assuming that the lands in possession of the petitioners are assigned lands since there is nothing on record to show that the assignment was made with a restraint or alienation petitioners cannot be evicted by invoking the provisions of the Act.

4. The contention of the learned Government Pleader is that since revenue records, and even the reply of the petitioners to the show cause notices issued to them, show that the land in respect of which the notices impugned are issued was an assigned land, the contention that the land is a private land is not and cannot be true and since the Sub-registrar has no authority to issue a certificate regarding the nature of

the lands, and since the petitioners, in any event have the remedy of an appeal under the provisions of the Act and the Rules made thereunder, these petitions, without exhausting the remedies open to the petitioners under the Act and the Rules made thereunder are not maintainable.

It is also his contention that if the petitioners want a declaration that the land in their possession is a private patta lands, but not government land, the remedy is by way of a suit in a civil Court.

5. The contention of the petitioners that there is no prima-facie evidence to show that the lands in their possession are assigned lands, cannot be accepted because in reply to the show cause notice got issued by them through an Advocate, they clearly alleged

> " ..... In fact during the time of British Government prior to independence i.e. during the year 1944 to 1946 the then British Government granted the lands comprised in survey Nos. Mentioned in the notices to persons belonging to the depressed class people who continued in position as owners of the property and not as assignee before their successors in interests have sold away the property to others ....."

So it is clear that even according to the petitioners, the lands in their possession were assigned to the depressed class people in 1944-46. As per Board Standing Order (BSO) 15, para 12 sub-para 3 such assigned land shall be heritable but not alienable. So the contention that there is no prima facie evidence on record that the land is assigned subject to the condition that it should not be alienated cannot be accepted.

6. All the three decisions referred to in para 3 supra, relied on by the learned counsel for the petitioners, are cases of grants made under Loani Rules and Hyderabad Land Revenue Act which relate to the land in Telangana Region. The land in possession of the petitioners is not in Telangana area and is not governed by either Laoni Rules or Hyderabad Land Revenue Act. So those decisions are of no help in deciding this case.

7. The contention of the learned counsel for the petitioners is that from the documents produced along with the counter affidavits filed on behalf of the respondents and the averments therein show that petitioners did receive the show

cause notices, and sent replies thereto and so the contention that petitioners evaded service of other proceedings is not and cannot be true, as petitioners, who received show cause notices, would not have evaded service of further proceedings. It is his contention that since the proceedings issued by the third respondent (MRO) show that C.V.Subbamma and Pandi David are the original assignees, and since petitioners did not purchase land from the said C.V.Subbamma or Pandi David, but had purchased the land from some others, it is clear that the lands in question are one being treated only as private lands. I see no force in the above contentions of the learned counsel for the petitioners because, according to the case of respondents, the land in possession of the petitioners was assigned to C.V.Subbamma and Pandi David, and that neither they nor their heirs are in possession thereof, and that petitioners, who admittedly are not related to them, are in possession thereof and thus, there is violation of the provisions of the Act and the Rules made thereunder. The fact that an assigned land is the subject matter of several alienations from some decades, would not *per se* make it a private patta land, and such land does not cease to be 'assigned land', governed by the provisions of the Act, merely because it was subjected to several alienations after the date of assignment and the date of the notice in Form No.1 issued under the provisions of the Act and the Rules made thereunder. So the only important point to be decided would be whether the land in possession of the petitioner was assigned without a condition restraining alienation or not ? As per BSO 15 (12)(3), referred to in para 5 supra, assignment of land to depressed classes would be subject to a condition that it is not alienable, but only is heritable since the replies sent by the petitioners to show cause notices issued to them disclose that the land in their possession was assigned to depressed class persons in 1944-46, in view of para 12 of BSO 15, it is for the petitioners to establish that the original assignees were assigned the land without any restraint or alienation. They did not produce the pattas granted to the original assignees.

8. It is not necessary to go into the question whether the petitioners evaded service of notices relating to the orders passed on the show cause notices issued to them, for deciding these petitions, because petitioners came to the court questioning the show cause notices but not the final orders passed thereon. It is well known that a show cause notice, *per se,* originally would not give rise to a cause of action for

invoking jurisdiction of this court under Article 226 of the Constitution, since any order passed in pursuance of such show cause notice, in appropriate cases, can be questioned by invoking the jurisdiction of this Court under Article 226 of the Constitution. In this case, petitioners, after having sent replies to the show cause notices issued to them, came to the court, alleging that respondents are trying to dispossess them from the land in their possession, by force, without passing orders, and obtained ex-parte interim orders by gaining the sympathy of the Court. From the counter affidavit filed on behalf of the respondents it is seen that final orders were passed even by the date of filing of these petitions. So petitioners have a remedy of appeal against those final orders. They can also file a suit for declaration that the lands in their possession are not government lands and are private patta lands, if they feel that the land in their possession is private land, so petitioners rushing to this court is not but an abuse of process of Court.

9. Hence, the writ petitions are dismissed with costs. Advocate fee is fixed at Rs.1000/- in each petition.

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14-03-2005.

MJL/*

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD.

WRIT PETITION NOS.19485 OF 2004 AND 19487 OF 2004

MEMORANDUM FO COSTS

Respondents( ) Costs Rs. P.

Stamp for Vakalatnama --------

Advocate’s Fee each petition quantified

By the Court 2,000.00

Translation and Printing Charges ----------

To be paid by the petitioner to the respondent 2,000.00

---------- Registrar.

To be attached to the order, dated---------- and made in -------- of ----------.

(Quantified by the Covent to Advocate's Fee towards one thousand only.)

To,

1 The Joint Collector, Nellore.
2 The Revenue Divisional officer, Gudur Nellore Dist.
3 The Mandal Revenue officer, Chilakur (M), Nellore Dist.

4. 2 CCs to G.P. for Assignments, High court Buildings, Hyderabad.

5. 2 CD copies.